

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| Siteone Landscape Supply, LLC, | . | Docket #CV-23-2084 (GRB) (ST) |
| | . | |
| Plaintiff, | . | |
| | . | |
| V. | . | United States Courthouse |
| | . | Central Islip, New York |
| Nicholas Giordano, et al., | . | February 27, 2024 |
| | . | 3:46 p.m. |
| Defendants. | . | |
| | . | |

TRANSCRIPT OF PRE-MOTION CONFERENCE
BEFORE THE HONORABLE GARY R. BROWN
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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1 (Proceeding in progress)

2 THE CLERK: -- 3-2084, Siteone Landscape Supply, LLC
3 vs. Giordano, et al. Counsel, please state your appearance
4 for the record. Plaintiff goes first.

5 MR. MULRY: For the Plaintiff, Kevin Mulry from
6 Farrell Fritz. Good morning, Your Honor. Good afternoon,
7 Your Honor.

8 THE COURT: Morning. Good afternoon.

9 MR. MULE: Good afternoon, Your Honor. Michael
10 Mule, Milman Labuda Law Group, along with my partner, Rob
11 Milman, on behalf of Defendants, Dominick Caroleo, The Garden
12 Department, Corp., 3670 Route 112, LLC, and 9 4th Street, LLC.

13 MS. COHEN: Good afternoon, Your Honor. Julie Cohen
14 from Skadden Arps, on behalf of Defendants Nicholas Giordano,
15 Vic Caroleo, Narrow Way Realty, Ltd., Narrow Way 2, LLC, Group
16 5 Associates, Ltd., Scapes Supply, LLC, and New Way
17 Management, LLC.

18 MR. ZABELL: Good afternoon, Judge. Saul Zabell. I
19 represent the same individuals Ms. Cohen just identified.

20 MR. GIBBS: Good afternoon (indiscern.).

21 THE COURT: (indiscern.)

22 MR. GIBBS: Evan Gibbs.

23 THE COURT: Okay. Go ahead.

24 MR. GIBBS: I'm sorry, Your Honor.

25 THE COURT: (indiscern.)

1 MR. GIBBS: I had trouble getting my phone off of
2 mute, but this is Evan Gibbs, appearing on behalf of
3 Plaintiff, Siteone, and I'm here with my colleague, Dan
4 Gorman, as well.

5 THE COURT: Okay. Anybody else? Sounds like we've
6 got everyone. All right. This is Judge Brown. There's a
7 Pre-Motion Conference we're on for here, and as you know from
8 my rules and the orders establishing this conference, I don't
9 stop anyone from making a Motion. You can make any Motion you
10 like, however, I do reserve the right -- If I think we can
11 resolve this here, to deem the Motion made and resolve it. So
12 feel free to argue anything you want. With that said, I'll
13 hand it off. Who would like to take the lead for the
14 Defendants making (indiscern.) the Motion?

15 MR. MULE: Your Honor, it's Michael Mule. I'd like
16 to begin on behalf of my clients, if I may?

17 THE COURT: Okay.

18 MR. MULE: Okay?

19 THE COURT: Sure.

20 MR. MULE: All right. Great. Your Honor, I
21 represent the Defendants Dominick Caroleo, The Garden
22 Department Corp, 3670 Route 112, and 9 4th Street, LLC. The
23 facts in this case, despite the long Complaint, are really
24 rather simple. Siteone's a multi-national, publicly traded
25 landscape supply company. They acquired one Defendant in this

The Court - Finding

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1 There were references to the sales data. Certainly Mr. Don
2 Caroleo set up a app that had a website, and I think there's
3 arguments that this was a public website. This is not a
4 website that's on The Garden Department website so that
5 everybody can look in and see how much in sales did the store
6 do today, and let's compare that historically to last year,
7 and let's look month-to-month, and look year-to-year. That,
8 with respect to sales data, plus other information, did give a
9 competitive advantage, and we say that the allegations of the
10 amended Complaint fully support the claims under the Trade
11 Secrets Act, and the Computer Fraud Abuse Act. I'll stop
12 there. If the Court has specific questions, I'm happy to
13 respond to those.

14 THE COURT: All right. Is that it, Mr. Mulry? Are
15 you done?

16 MR. MULRY: Yes, Your Honor.

17 THE COURT: Excellent. All right. Well, I've heard
18 enough, and what I'll say is this. I think Counsel did a fine
19 job today, an excruciatingly fine job. I have every detail of
20 the argument on the record. More importantly, as I've been
21 reminded, and of course I recall, I've seen extensive briefing
22 on this case in the context of the Preliminary Injunction
23 proceedings, and as such I believe I'm in any position to rule
24 on this without further delay to this case, which has already
25 been substantially delayed in a sense, and I don't think

1 that's anyone's fault, but it has just taken a while to get
2 our arms around these various issues, so I'm going to deem the
3 Motions made, and I'm going to decide them now. Will not be
4 issuing a written decision. The decision will be on the
5 record, but I will say that as part of this decision, I've
6 incorporated everything that was put forth in the parties'
7 letter briefs to the Court, which were quite good and
8 thorough, as well as the argument today, which were detailed
9 down to LEXIS citations, so we have quite an impressive
10 record.

11 With that said, of course which before the Court is a Rule
12 12 Motion to Dismiss the Complaint on the grounds that it
13 fails to state a cause of action. I will not belabor the
14 record with the standard here, because you all know it quite
15 so very well. The answer of course is that taking all drawn
16 inferences and (indiscern.) non-movement here the Plaintiff,
17 and question me, and assuming the allegations to be true for
18 these purposes, are there sufficient allegations to go forward
19 with claims that satisfy both Rule 8, as well as in certain
20 instances in this case there are elements of 9(b), but it's
21 mainly Rule 8. Either way. But Defendant claims that the
22 allegations are insufficient. Of course the Court had issued
23 several decisions on this case, and in those Petitions the
24 Plaintiff did not prevail in getting Preliminary Injunctive
25 Relief. Of course (indiscern.) is adjudged by a completely

1 different standard. The standard there is that it's quite
2 extraordinary, because Preliminary Injunctions involve
3 extraordinary efforts and extraordinary exercise of power by
4 the Court.

5 This is a different situation. The question is, does
6 this Complaint -- it's a 55-page Complaint here -- satisfy
7 Rule 8(b) notice in absolute (indiscern.) the Rule 8, and I
8 would say that in the instances where 9(b) an analysis is
9 required, it satisfies 9(b) as well. Therefore, I'm deeming
10 the Motions made and denied. So I'm denying the Motions to
11 Dismiss, and the case can move forward. Now let's get to
12 that, because that to me is the most important thing. I would
13 like to -- I will leave to Magistrate Tiscione done a fine job
14 in this case, the management of the Discovery, but I do think
15 that this has to be put on a rapid path in Discovery. I think
16 we have to get this to completion rapidly, because it's an
17 important ongoing business concern. So with that in mind, I'd
18 love to hear the parties' input as to what you think a
19 reasonable Discovery schedule would look like. Let me start
20 with the Plaintiff. Mr. Mulry, what do you think in terms of
21 how long should it take to go from this point where we're
22 denying Motion to Dismiss, to the point where we're ready for
23 the next step, (indiscern.) or the Summary Judgment, or trial,
24 or whatever?

25 MR. MULRY: Well, Judge, one thing I'll preface that